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IN THE UTAH COURT OF APPEALS

THE STATE OF UTAH, :
Plaintiff/Appellee, :
v. :
RAYMOND MICHAEL QUINTANA, : Case No. 20030534-CA
Defendant/Appellant. :

APPELLANT'S REPLY BRIEF

Consolidated appeal from the denial of a motion to withdraw a guilty plea, in the Third Judicial District Court, in and for Salt Lake County, State of Utah, the Honorable Robin W. Reese, presiding.

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IN THE UTAH COURT OF APPEALS

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INTRODUCTION

This Court has jurisdiction over denials of motions to withdraw guilty pleas when, as here, trial judges fail to correctly advise defendants of the time period for filing such motions. The record below establishes that the trial judge failed to convey the correct deadline and that Mr. Quintana relied on an incorrect statement of law contained in the plea affidavit. Moreover, the cases the State cites do not address this situation and are, therefore, inapposite. The State further errs in claiming that Mr. Quintana affirmatively waived his appellate challenge. To the contrary, this Court recently rejected this same claim and, in any event, the invited error doctrine does not apply where, as below, the trial judge had an opportunity to correctly decide the issue. The State's erroneous conclusions also undermine its claim that Mr. Quintana was not entitled to an extension of time to file his motion to withdraw. Rather, the trial judge's failure to correct the erroneous statement in the plea affidavit supported extending the time period.

I. WHEN THE TRIAL COURT FAILS TO CORRECTLY INFORM THE DEFENDANT OF THE TIME PERIOD FOR FILING A MOTION TO WITHDRAW A GUILTY PLEA, THIS COURT HAS JURISDICTION TO REMEDY THE TRIAL COURT'S ERROR.

The State mistakenly argues that this Court lacks jurisdiction over this appeal.

State's Brief at 11-12. The State does not contest this Court's repeated holding that the jurisdictional bar for appealing untimely motions to withdraw a guilty plea does not apply "if the defendant is not advised" of the deadline when the plea is entered. State v. Price, 837 P.2d 578, 583 (Utah Ct. App. 1992), overruled on other grounds, State v. Ostler, 2001 UT 68, ¶13, 31 P.3d 528; see State v. Canfield, 917 P.2d 561, 562 (Utah Ct. App. 1996); State v. Dean, 2002 UT App 323, ¶6, 57 P.3d 1106, cert. granted 64 P.3d 586 (Utah 2003) (quoting Canfield); State v. Tarnawiecki, 2000 UT App 186, ¶7, 5 P.3d 1222 (reiterating Price). Rather, the State contends that the trial judge satisfied this requirement and informed Mr. Quintana of the deadline at the change of plea hearing. State's Brief at 10.

The State fails, however, to distinguish Mr. Quintana's misunderstanding of the deadline for filing a motion to withdraw and the trial judge's failure to determine Mr. Quintana's understanding. Although the trial judge mentioned the new time deadline at the plea change hearing, she never asked Mr. Quintana about his understanding of that deadline, nor did she raise the obvious discrepancy listed in the plea affidavit. R211: 97; R684: 57; R684: 80 at 5. Rather, she merely questioned Mr. Quintana and defense

counsel about Mr. Quintana's understanding of the plea affidavit, which included the erroneous description about the 30-day withdrawal period. R684: 80 at 2-5. Contrary to the State's characterizations, Mr. Quintana's and defense counsel's assurances that Mr. Quintana understood the plea affidavit, if anything, show that Mr. Quintana misunderstood the deadline for filing a motion to withdraw his guilty plea as misstated in the affidavit. Id.

Because the trial judge failed to "advise[]" Mr. Quintana of the applicable deadline, this Court has jurisdiction over this appeal. Dean, 2002 UT App 323, ¶6, 57 P.3d 1106 (quoting Canfield, 917 P.2d at 562); Tarnawiecki, 2000 UT App 186, ¶7, 5 P.3d 1222; Price, 837 P.2d at 583. The constitutional right to a knowing and voluntary waiver of rights before pleading guilty requires this result. "If the defendant is not fully informed of his [or her] rights prior to pleading guilty, then the guilty plea cannot be voluntary." State v. Hittle, 2002 UT App 134, ¶10, 47 P.3d 101, cert. granted 59 P.3d 603 (Utah 2002); see State v. Visser, 2000 UT 88, ¶11, 22 P.3d 1242. Allowing trial judges to fail to determine defendants' understanding of their rights would sanction the unwitting violation of constitutional requirements. Such an approach also risks turning the strict compliance doctrine into "substantial compliance" in violation of well-established precedent. Tarnawicki, 2000 UT App 186, ¶12, 5 P.3d 1222.

The State's citations to State v. Reyes, 2002 UT 13, 40 P.3d 630, State v. Brooks, 2003 UT App 84, and State v. Swensen, 1999 UT App 340, are equally unavailing.

Because the defendant in Reyes completely failed to file a motion to withdraw his guilty plea, the timeliness of such a motion never arose in that case. 2002 UT 13, ¶¶1, 3, 40 P.3d 630. Further, the defendants in all three cases first tried to challenge their guilty pleas several years after conviction. Id.; Brooks, 2003 UT App 84; Swensen, 1999 UT App 340; see also State v. Johnson, 856 P.2d 1064 (Utah 1993) (no motion to withdraw ever filed and challenge raised several years after conviction). But, here, Mr. Quintana filed his motion three days after sentencing within the period specified in the plea affidavit and then timely appealed from the denial of the motion. The multiple years' lapse in the State's cases present very different facts from Mr. Quintana's misunderstanding of the law and his prompt request to withdraw his guilty pleas. Additionally, Brooks does not address the situation presented here, in which the trial judge failed to adequately advise the defendant of the deadline for withdrawing a guilty plea. Brooks, 2003 UT App 84. Likewise, Swenson is inapplicable because the trial judge in that case correctly informed the defendant of the time requirements. Swensen, 1999 UT App 340. The State's cases have no application to this appeal.

II. THIS COURT HAS REJECTED THE STATE'S INVITED ERROR ARGUMENT

Like the State's jurisdictional argument, this Court has rejected the State's assertion that Mr. Quintana and defense counsel invited the trial judge to err. In State v. Corwell, 2003 UT App 261, ¶18, 74 P.3d 1171, cert. granted 80 P.3d 152 (Utah 2003),

the State raised an identical argument that the defense affirmatively waived a challenge to the guilty plea "by failing to point out" the trial judge's errors. This Court rejected faulting the defense for the trial judge's omissions and summarized Utah case law by concluding that "[t]he duty to ensure that defendants know and understand the rights they are surrendering when pleading guilty rests not on the parties, but on the trial court." Id. (citing State v. Gibbons, 740 P.2d 1309, 1312 (Utah 1987)); see Visser, 2000 UT 88, ¶11, 22 P.3d 1242.

The State misfires in blaming Mr. Quintana for seeking a quick resolution to his cases. State's Brief at 13. As explained above, the trial judge did not correct the misstatement of law in the plea affidavit or correct Mr. Quintana's misunderstanding. Supra at 2-3. Thus, the trial judge violated her duty of ensuring that "'no requirement of [] [R]ule [11] is omitted. . . ." Visser, 2000 UT 88, ¶12, 22 P.3d 1242 (quoting State v. Maguire, 830 P.2d 216, 218 (Utah 1991)). The State's invited error argument wrongly shifts the trial judge's responsibility over guilty pleas to defense counsel. Corwell, 2003 UT App 261, ¶17, 74 P.3d 1171.

In any event, the invited error doctrine does not apply here. Counsel only waives an appellate issue when he or she "affirmatively represent[s] to the court that he or she had no objection" to the trial judge's decision. State v. Hamilton, 2003 UT 22, ¶54, 70 P.3d 111. This rule is designed to give trial judges the first "opportunity" to resolve disputes and prevents counsel from consciously hoping to "enhance the defendant's

chances of acquittal" and thereby planting error on appeal. State v. Geukgeuzian, 2004 UT 16, ¶12, ___ P.3d ___; State v. Bullock, 791 P.2d 155, 159 (Utah 1989), cert. denied 497 U.S. 1024 (1990). But, here, Mr. Quintana's filing of a motion to withdraw his guilty pleas provided the trial judge an "opportunity to address" the adequacy of the plea colloquy. Gibbons, 740 P.2d at 1312. Thus, there was no concern below for misleading the trial judge or planting error on appeal. Dean, 2002 UT App 323, ¶5, 57 P.3d 1106. Rather, the trial judge simply misunderstood her duty to "advise[]" Mr. Quintana of the deadline for withdrawing his guilty pleas. Canfield, 917 P.2d at 562.

III. THE TRIAL COURT'S DISCRETION TO EXTEND THE FILING PERIOD DOES NOT EXCUSE THE TRIAL JUDGE'S FAILURE TO ADHERE TO RULE 11 AND CONSTITUTIONAL REQUIREMENTS

The trial judge's discretion to extend the period for filing a motion to withdraw provides no support for the trial judge's erroneous denial of Mr. Quintana's motion. State's Brief at 14-15. First, as explained above, the State wrongly concludes that the trial judge adequately informed Mr. Quintana of the applicable deadline. Supra pages 2-3. Instead of supporting the denial of an extension, the trial judge's statements and Mr. Quintana's assurances that he understood the incorrect statement of law in the plea affidavit establish Mr. Quintana's confusion and misunderstanding of the law.

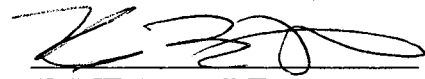
Second, the judge's failure to determine Mr. Quintana's understanding and the misstatement of the law would establish an abuse of discretion in refusing to extend the

time period under Rule 11(f). Trial judges abuse their discretion when they "misapply" the law. State v. Petersen, 810 P.2d 421, 425 (Utah 1991); State v. Coleman, 2001 UT App 281, ¶3 n.3, 34 P.3d 790. In particular, the failure to understand the law causes judges to "weigh[] the options differently. . . ." State v. Hammond, 2001 UT 92, ¶20, 34 P.3d 773. Because the trial judge's failure to correctly advise Mr. Quintana of his rights caused the late filing, the judge would have abused her discretion in denying an extension.¹

CONCLUSION

Mr. Quintana requests this Court to reverse the trial court's denial of his motion to withdraw his guilty plea and to allow him to pursue his motion.

Submitted this 24th day of March, 2004.



KENT R. HART

Attorney for Defendant/Appellant

¹Although the trial judge sentenced Mr. Quintana to three consecutive terms of up to 15 years each, Mr. Quintana requests this Court to remind the Board of Pardons and Parole that Utah law limits the length of his sentences to a maximum of 30 years. Utah Code Ann. §76-3-401(6) (2003); see State v. Law, 2003 UT App 228, ¶7, 75 P.3d 923.

CERTIFICATE OF DELIVERY

I, KENT R. HART, certify that I have caused to be delivered eight copies of this brief to the Utah Court of Appeals, 450 South State, 5th Floor, P.O. Box 140230, Salt Lake City, Utah 84114-0230, and four copies to the Utah Attorney General's Office, Heber M. Wells Building, 160 East 300 South, 6th Floor, P.O. Box 140854, Salt Lake City, Utah 84114-0854, this 24th day of March, 2004.


KENT R. HART

DELIVERED to the Utah Court of Appeals and the Utah Attorney General's Office as indicated above this ____ day of March, 2004.
